
(2002) 03 MP CK 0085
In the Madhya Pradesh High Court
Case No : Writ Petition No. 849/98

Anoop Kumar Shrivastava

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2003) ILR (MP) 33 : (2002) 5 MPHT 166 : (2002) 2 MPJR 331 :
(2002) 3 MPLJ 218

Hon'ble Judges : Bhawani Singh, C.J.; K.K. Lahoti, J

Bench : Division Bench

Advocate : K.K. Trivedi, for the Appellant; P.D. Gupta, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.

Through this writ petition, the petitioner challenges the order dated October 14, 1997, passed by the M.P. State Administrative Tribunal, Jabalpur, in O.A. No. 2442/95.

The petitioner was Sub-Engineer in the Rural Engineering Services of the State Government. He was trapped for taking bribe while posted at Budhar (Shahdol). Consequently, he was prosecuted for offences u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1988, and Section 161 of the Indian Penal Code. He was found guilty by the Special Judge, Shahdol, and sentenced to various terms of rigorous imprisonment and fine with default clause, vide judgment dated April 1, 1987. He was dismissed from service by the Development Commissioner, vide order dated May 8, 1987. However, on appeal, he was acquitted by this Court, vide judgment dated January 18, 1993.

The petitioner filed Original Application (O.A. No. 3271/93) for setting aside the

order of dismissal and direction for taking him back in service with full back wages and allowances including regularisation of suspension period, treating him in service uninterruptedly. The Tribunal, by order dated May 10, 1995, directed the respondents to consider the case of the petitioner and pass order regarding his posting within a period of 45 days. No specific order with regard to payment of salary for the period of suspension or for the period he remained out of service on account of dismissal was passed. The petitioner was taken back in service by order dated August 3, 1994. But with regard to period of suspension and period for which he remained out of service, orders were to be passed later. When the orders were not passed, another Original Application (O.A. No. 2442/95), was filed for directions to the respondents for payment of arrears of salary from May, 1983 to August, 1994, along with interest.

The Tribunal considered the question whether the petitioner was entitled to salary for the period of his suspension and also for the period during which he remained out of service, consequent upon his dismissal. With regard to first part of the claim, the Tribunal directed the respondents to take final decision on the claim within a period of three months and while doing so, the respondents shall also pass order with regard to claim for interest on arrears of salary payable to the petitioner and in case, he felt aggrieved by any order, liberty was extended to approach the Tribunal for seeking redressal against the order. With regard to salary for period the petitioner remained out of service on account of his dismissal, namely 8-5-1987, till the date of reinstatement, i.e., 3-8-1994, the claim has been rejected. Precisely, it is held that the petitioner is not entitled to receive back wages from the date of his dismissal till the date of his acquittal. Interest at the rate of 15% per annum has been ordered to be paid on the salary payable to him for period from 19-1-1993 to the date of reinstatement on 3-8-1994.

Shri K.K. Trivedi, learned Counsel appearing for the petitioner, submits that he has been paid salary from the date of acquittal till the date of reinstatement, but he is entitled to salary from the date of his dismissal to the date of acquittal. For sustaining this claim, learned Counsel places reliance on the Apex Court decision in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, . Giving consideration whole matter, we are of the opinion that the claim of the petitioner for salary for the period in dispute is untenable. The obligation for payment of salary by employer to employee is based on services rendered by the employee to the employer. The employee is not entitled to the salary when he fails to render service to the employer on principle of "no work no pay". But where the employer is responsible for the employee not being able to render the services, the employer may be, in the given facts of the case, directed to pay salary for the period in question. But where he is not responsible for bringing about the situation when employee cannot render service, the obligation of employer to pay the wages is not there. This principle is approved by the Apex Court in Ranchhodji Chaturji Thakore's case (supra).

Adverting to the facts of the case for application of the principle, we find that the petitioner was involved for commission of offences u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1988, and Section 161 of the Indian Penal Code. He was found guilty and sentenced to imprisonment and fine by the Special Judge. This situation was not brought about by the employer. He was himself responsible for this. The judgment of Special Judge was followed by the respondents for passing the order of dismissal of petitioner from service. It may be true that he was acquitted later by this Court, but that would not put obligation on the employer to pay salary, since he was not dismissed from service in a departmental enquiry initiated by the employer, which was found baseless, vexatious, malafide and arbitrary. In such circumstances, it can be said that the employer was responsible for bringing about the situation and employee was not, therefore, entitled to back wages. The petitioner did not render service from the date of order of dismissal 8-54987 to the date of acquittal 19-1-1993, therefore, the petitioner is not entitled to salary for this period nor the employer is obliged to pay the same. No other question was pressed for consideration and decision.

The result is that there is no merit in this petition and the same is dismissed.